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NO. 83-424

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES R. PRESLEY,
Petitioner,

v.

GEOPHYSICAL SERVICE, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S RESPONSE TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To The Honorable United States Supreme Court:

NOW COMES Petitioner, James R. Presley, and files this his Response to the Opposition to Petition for Writ of Certiorari filed by Geophysical Service, Inc., Respondent, and for such Response would respectfully show unto the Court the following:

PETITIONER'S RESPONSE TO RESPONDENT'S CLAIMED REASONS FOR DENYING WRIT

I. The Absence of Conflict Between the Circuits

Petitioner acknowledged in his Petition for Writ of Certiorari that the Fifth Circuit Opinion below presented a case of first impression from a United States Circuit Court of Appeals. That fact alone, however, does not diminish the significance of the legal questions presented by the Petition or minimize the number of cases in which this issue has arisen and is currently arising in the Federal Courts.

Respondent has carefully worded its implicit claim that Petitioner's plight is isolated by arguing that the only other "published" case considering the Jones Act issue under the ORVA is another opinion out of a district court in the Fifth Circuit, *Sennett v. Shell Oil Co.*, 325 F.Supp. 1 (E.D. La. 1971). Respondent is, nonetheless, well aware of the existence of other *unpublished* opinions in similar cases, as well as other pending litigation which depend upon the interpretation of the ORVA that is squarely presented by Presley's Petition. In the District Court and in the Fifth Circuit, Respondent relied upon two such unpublished opinions which had summarily denied Jones Act claims based on *Sennett. Trowell v. Western Geophysical Co. of America,* Ca. No. 75-H-1779 (S.D. Tex., April 12, 1977) and *Castro v. Vessel LAFAYETTE,* Ca. No. 76-H-755 (S.D. Tex., March 2, 1978). On the eve of oral argument in the Fifth Circuit, Respondent produced another magistrate's decision denying Jones Act remedies to a worker on an Oceanographic Research Vessel from the Northern District of California.

In Re the M/V PEACOCK, Ca. No. C-80-2642-SAW (FSL) (May 4, 1983). Respondent is also well aware of the pendency of another Jones Act claim which has been filed against *it* in the San Diego Division of the California Federal District Court and arising out of the operation of the Carribean Seal and involving an injury on the same voyage on which Presley was injured.

Since the publication of Judge Gibson's District Court Opinion in the instant case, the undersigned counsel for Petitioner has received inquiries from lawyers in Waco, Texas, California, Michigan, Louisiana, and Corpus Christi, regarding Jones Act claims by members of the "scientific crew" who were injured aboard an alleged oceanographic research vessel.

II. The Importance of the Question of Law Presented

Certainly the denial of a Jones Act remedy to an injured seaman is not an insignificant or unimportant issue. Nor is the Jones Act status of Petitioner, Presley, as a scientific crew member aboard an oceanographic research vessel a numerically insignificant issue as perhaps best illustrated by the number of interested amici who appeared in the Fifth Circuit as operators of such vessels. The overall numerical significance of the questions presented may best be summarized in Senate Report No. 96-886 relative the Inspection and Manning Laws of Small Vessels, 1980 U.S.C.C.&A.N. p. 3294-95 wherein the Senate Committee observed:

> "The evolution and phenomenal growth during the past thirty years of the highly specialized offshore mineral and oil support industry has provided another

strong, clear example that highlights the deficiencies of the existing marine safety statutes in such circumstances.

This important segment of our merchant marine operates over 3,000 vessels and directly employs some 30,000 persons in support of offshore oil and energy exploration and production. The offshore marine service industry consists of a diversified group of firms that provide a wide range of exploration, construction, distribution-supply, and safety services to the offshore oil and mineral extractive industries, in the almost twenty areas of the world where oil is currently sought beneath the seabed. Vessel types include: supply, tug-supply, tug, crew, utility and standby, *seismic*, diving support vessels and barges. This industry has grown to its present size and diversity since its birth in 1947. Most of the industry is centered in the Gulf of Mexico but the industry operates worldwide." [Emphasis supplied]

III. The Propriety of Judicial Interpretation

Respondent's alleged third reason for opposing certiorari claims that the Congress, rather than this Court, should reconcile or decide the construction of the withdrawal of Jones Act coverage to James Presley and those similarly situated upon alleged oceanographic research vessels. This argument totally begs the question in that it assumes that the Congress intended the withdrawal of that coverage in the first instance. That assumption is precisely what has been challenged by Petitioner in the instant case. This Court is clearly the proper forum for the disposition of such issue.

Nor is the fact that the instant case arises from an interlocutory appeal initially taken by Respondent of any significance whatsoever with regards to the granting of

Certiorari in this case. The Fifth Circuit Opinion is a final disposition of the Jones Act Claims by Presley against Respondent as a Summary Judgment has been granted which cannot be otherwise determined by the District Court and will not be redetermined by the Fifth Circuit upon a subsequent appeal. This Court has not hesitated to grant certiorari to review matters on an interlocutory appeal which are of sufficient significance to otherwise warrant the granting of certiorari. *United Steel Workers v. R. H. Bouligny, Inc.*, 382 U.S. 145 (1965).

IV. The Irrelevance of the Sailing School Vessel's Act of 1982, 46 U.S.C.A. § 446-446(d) (1983 Supp.)

In its opposition, Respondent has chastised Petitioner for not alluding to the Sailing School Vessels Act in his Petition for Certiorari. On its face, that Act is clearly inapplicable to any issue presented in this case. Significantly the legislative history has been carefully edited by Respondent to exclude the consideration that was expressly given by the Congress in connection with sailing school students and instructors. The legislative history as partially included in the 1982 U.S.C.C.&A.N. at 3142 specifically acknowledges the Congressional intent to exempt sailing school instructors and sailing school students from the applicability of maritime law protection otherwise afforded seamen in the following terms:

> "The possibility that students or instructors aboard school vessels may be viewed by the courts as seamen entitled to recover damages for injuries under maritime legal doctrines also hampers school ship

> operations. Wide-ranging liability for injuries to seamen has historically been justified on the grounds that seamen are in need of special protection because they are at the mercy of the vessel's master, and *that the vessel operator who derives a profit from their employment should bear the costs of compensating them for their injuries. These justifications do not support the imposition of such broad liability on the operator of a sailing school ship, which operates to provide an educational opportunity for students."* [Emphasis supplied]

Indeed sailing school students are not "employees" in the first instance and the wording of the Sailing School Vessels Act, as well as the legislative history, differs *markedly* from the ORVA.

Not insignificantly the Respondent also omitted from its citation to the Sailing School Vessel's Act, § 446(d), which specifically postpones the operation of even that Act for 18 months, since the purpose of the Act, in part, was to encourage the development of private institutions supplying educational opportunities for sailing school development. Ultimately, it should be noted that negligence liability remains against the vessel operators as there are specific provisions in the Sailing School Vessels Act for the maintenance of liability insurance for coverage as to death or injury to such persons.

In contrast, the argument made by Respondent and adopted by the Fifth Circuit eliminates all negligence liability on the part of the employer. There is no supporting legislative history for such a far-reaching interpretation in the Oceanographic Research Vessels Act nor is there language in the ORVA to justify the holding of the Fifth Circuit or Respondent's argumentation.

It is perhaps intriguing that Respondent, GSI, makes the argument that the ORVA so obviously withdraws Jones Act remedies, since GSI itself never even made such a contention, but rather paid one of its employees under the Jones Act without ever making the claim of exemption from Jones Act coverage by virtue of the Oceanographic Research Vessels Act in *Viger v. Geophysical Services, Inc.*, 476 F.2d 1288 (5th Cir. 1973). Thus, nearly eight years after the passage of the ORVA, GSI was totally unaware of the claimed obvious intended exemption of Jones Act status for its scientific personnel on an Oceanographic Research Vessel.

The obvious conclusion to be drawn is that the Act does not on its face withdraw Jones Act coverage from James Presley, but such has been accomplished solely by a judicial interpretation which virtually ignores the legislative history of the ORVA. That interpretation should be rectified by this Court in accordance with Presley's Petition for Certiorari.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES, ARGUMENTS AND AUTHORITIES CONSIDERED, James R. Presley, Petitioner herein, respectfully prays that this Petition for Certiorari be granted and that upon hearing hereof that the Fifth Circuit Opinion and Judgment summarily denying Presley's Jones Act claim should be reversed and the cause ordered remanded to the District Court for trial, and that he be awarded his costs of appeal and such other

and further relief as the Court feels that he has shown himself justly entitled to under the circumstances.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

On this _____ day of December, 1983, a true and correct copy of the above and foregoing instrument was forwarded via U.S. Certified Mail, Return Receipt Requested, to:

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